

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
June 24, 2008 Session

STATE OF TENNESSEE v. ROBERT W. RODDY

**Appeal from the Circuit Court for Rhea County
No. 16326 J. Curtis Smith, Judge**

No. E2007-02185-CCA-R3-CD - Filed September 8, 2008

The Defendant, Robert W. Roddy, was convicted of two counts of first degree murder and one count of aggravated assault. For these convictions, he received two consecutive life terms plus four years. In this direct appeal, he presents three¹ issues for our review: (1) whether the trial court abused its discretion by admitting into evidence two photographs; (2) whether the evidence was sufficient to support his convictions, arguing that the proof was insufficient to overcome his claims of self-defense and intoxication; and (3) whether the trial court erred by imposing consecutive sentences. Following a review of the record and the applicable authorities, we affirm the Defendant's convictions and sentences.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

Edward L. Boring, Pikeville, Tennessee, for the appellant, Robert W. Roddy.

Robert E. Cooper, Jr., Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; J. Michael Taylor, District Attorney General; and James W. Pope, III, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

This case arises from an argument between the Defendant and Robert C. Hawkins and Mikel L. Hawkins, which occurred in front of Robert C. Hawkins' home located in the Morgantown area of Rhea County. The argument ultimately led to the Defendant shooting Robert C. Hawkins and Mikel L. Hawkins and pointing his weapon at Teresa Gaynell Byrd. As a result, a Rhea County

¹ For the purposes of clarity, we have renumbered and reordered the issues as stated by the Defendant in his brief.

grand jury indicted the Defendant for two counts of first degree murder and one count of aggravated assault. See Tenn. Code Ann. § 39-13-102(a)(1) (aggravated assault), -202(a)(1) (first degree murder). A jury trial was held on May 9 and 10, 2006.

Viewing the evidence in the light most favorable to the State, the proof at trial showed that, on Saturday, September 4, 2004, forty-one-year-old Mikel L. Hawkins (Mikel) walked over to his sister's, Teresa Gaynell Byrd (Byrd), house to get some clothing she had purchased at a yard sale. Mikel lived in a mobile home on his parents' property, and Byrd resided across the street from her parents' home.

After Mikel retrieved the clothes and was returning home, Byrd observed the Defendant approaching her seventy-year-old father's, Robert C. Hawkins, aka R.C. (Robert), house and instructed Mikel to tell the Defendant to leave because Robert was not feeling well. Robert had multiple health problems, including diabetes, breathing troubles, and heart disease, and Mikel had just undergone surgery on September 3. The Defendant lived in the neighborhood, "just [at] the end of the street" where the Hawkins lived.

According to Byrd, she first saw the Defendant, who was wearing a white cap and carrying a bottle of beer, in Robert's driveway. Robert's front yard was enclosed by a chain link fence. Byrd testified that the gates were always open and were tied back with a tomato stick. There was also a plow in the yard with a "a tomato stick at the side of it." Byrd heard the Defendant loudly ask "[w]here does R.C. Hawkins live?"

After an argument broke out between the Defendant and Mikel, Byrd crossed over to her parents' yard yelling for the Defendant to leave and stating that she was calling the police. Byrd testified that she was scared because she saw the Defendant reach for his pocket, and she assumed he had a gun. Mikel threw the clothes down and grabbed the tomato stick. Byrd tried to telephone the authorities as she walked to the front porch of her parents' residence. Her legally blind mother was trying to come outside, and Byrd was trying to make her stay in the house.

Robert appeared from around the house and took the tomato stick from Mikel. Robert then swung the stick at the Defendant. The altercation moved outside of the fence over into the yard of a neighbor named Chad Reel. According to Byrd, Mikel was "[j]ust standing there" when the Defendant shot him; he did not have a weapon of any kind. Mikel fell backwards into Reel's yard. At this time, Robert was already on the ground holding his arms up. The Defendant shot Robert and then turned back and shot at Mikel one more time.

The Defendant approached Robert and began hitting him. Byrd came from inside the house and started screaming "[l]eave him alone and go on, leave him alone." Byrd observed the Defendant laughing. The Defendant then turned toward Byrd and pointed the gun at her.

Roy Montgomery, an off-duty police officer and a neighborhood resident, heard the gunshots and received information about the shooting from his police scanner, so he proceeded over to the Hawkins' residence. Once there, Montgomery approached with his weapon drawn and ordered the Defendant to put his gun down and get on the ground. He heard the Defendant, who still had a beer

bottle in his hand, yell at Byrd “I’ll kill you next[.]” Montgomery shouted these instructions a few more times, and the Defendant looked at Montgomery with a blank stare. Ultimately, the Defendant complied with Montgomery’s commands and dropped his weapon. According to Montgomery, the Defendant appeared to be under the influence. No witnesses knew of any problems between the Defendant and Robert and/or Mikel.

Byrd went to assist her father who was still alive. Mikel was dead on the scene. Neighbor and nurse Ashley Travis also assisted Byrd in treating Robert’s wounds. Thereafter, more emergency personnel arrived on the scene.

Reel, who was at home, heard the shots and went outside to see what was going on. He saw Mikel bloody and lying on the ground and Robert trying to crawl away from the armed Defendant. The Defendant was still carrying a beer bottle. Reel returned inside and got his girlfriend Ashley Travis, and they ran to a house “down below” Reel’s home. When Reel returned to his house, he saw that Robert was still trying to crawl and that the Defendant was slapping him in the face. At one point, the Defendant also rubbed Robert’s head. According to Reel, during this time, the Defendant took a “slug” of his beer.

Travis was returning home on September 4 when she saw the Defendant standing in the road. Because she could not go around him, she slowed down and stopped, and the Defendant began laughing and came toward the driver’s side of the vehicle. According to Travis, the Defendant put his hand inside the window and said “[r]oll your window down.” Travis said no and left. According to Travis, the Defendant’s eyes were “really glazed over and he was laughing for no reason.” Travis also later observed the Defendant standing in front of Robert, who was on the ground trying to crawl as the Defendant was slapping him.

Once Montgomery arrived, Travis went to medically assist Robert. She concluded that Mikel was already dead at the time. Travis saw that the Defendant had some type of head injury.

Other neighbors, Mark Porter and David Thomas, also observed the events. Prior to the shootings, Porter went over to the Defendant’s house to ask him about some money he had loaned the Defendant. The Defendant offered Porter a drink and showed him a picture of a dog. As Porter was leaving, the Defendant inquired if Porter had seen the dog. Porter later observed the armed Defendant arguing with Robert. He saw the Defendant shoot Robert and Mikel; he further believed that the Defendant tried to fire the weapon again, but it “jammed.” Porter telephoned 911 to report the shootings and stated, “Yeah, Robert, the suspect, is trying to help the victim.” Just prior to the shootings, the Defendant asked David Thomas’ wife if she had seen his missing dog.

Paramedic Paul Putnam arrived on the scene and treated the Defendant, who had a head injury. Putnam initially believed it to be a gunshot wound. The Defendant was very belligerent with Putnam. Whenever Putnam’s female partner, Tiffany Coy, came around the Defendant, he would calm down. He stated to Coy that “he would do anything for” her. Eventually the wound was bandaged and the bleeding controlled. While in transport to the hospital, the Defendant tried to get Coy’s phone number, and he repeatedly asked Coy to be his girlfriend. Coy was able to leave the Defendant at the hospital when another female nurse came into the room, diverting his attention.

The Defendant needed to be transported to Erlanger Hospital in Chattanooga in order for his wound to be treated. Flight Nurse James Wolfe arrived to transport the Defendant. While attempting to secure the Defendant, the Defendant hit Wolfe. The Defendant was then sedated so he could be safely transported. According to Wolfe, the Defendant did not have any problems understanding him or any other medical professional.

While at the hospital, the Defendant consented to have his blood drawn. The results of those tests showed that the Defendant's blood alcohol content was between .16 and .18.

Mikel was dead on the scene from a gunshot wound, and Robert later died at the hospital from a gunshot wound. Dr. Ron Toolsie opined that the shots were not fired at close range.

Following the conclusion of the proof, the jury found the Defendant guilty as charged. The trial court sentenced him to consecutive terms of life imprisonment plus four years. Following the denial of his motion for a new trial, the Defendant filed a notice of appeal to this Court. The case is now properly before us for our review.

I. Admission of Photograph

First, the Defendant argues that the trial court violated the Tennessee Rules of Evidence by permitting the introduction of two photographs "which showed scuff marks in the alleged victim's driveway" at trial. He argues that the photographs (Exhibits 9 and 10) are more prejudicial than probative.

Tennessee courts follow a policy of liberality in the admission of photographs in both civil and criminal cases. State v. Banks, 564 S.W.2d 947, 949 (Tenn. 1978) (citations omitted). Accordingly, "'the admissibility of photographs lies with the discretion of the trial court' whose ruling 'will not be overturned on appeal except upon a clear showing of an abuse of discretion.'" State v. Faulkner, 154 S.W.3d 48, 67 app. (Tenn. 2005) (quoting Banks, 564 S.W.2d at 949). However, before a photograph may be entered into evidence, it must be relevant to an issue that the jury must decide, and the probative value of the photograph must outweigh any prejudicial effect that it may have upon the trier of fact. State v. Vann, 976 S.W.2d 93, 102 (Tenn. 1998); State v. Braden, 867 S.W.2d 750, 758 (Tenn. Crim. App. 1993) (citation omitted); see also Tenn. R. Evid. 401, 403.

The challenged photographic exhibits depict a "gravel disturbance" in the victim's driveway. The photographs also showed a measuring device, indicating the length of the marks. The Defendant's challenge to these pictures is as follows:

It appears that the State was trying to put [the Defendant] on the property of the deceased. No proof was established that the scuff marks were that of [the Defendant] or of the victims. The State had no proof as to how the marks got there, who made them nor how long the scuff marks had been there. There was no proof that [the Defendant] had anything to do with the scuff marks in the driveway.

The Defendant submits that the photographs were irrelevant because "the State showed no proof as to when the scuff marks were made or who made the scuff marks" or, alternatively, that the

photographs were unduly prejudicial. The State argues that the photographs were relevant to show scuff marks where, according to testimony, the initial confrontation occurred.

Defense counsel objected to the photographs at trial, and the following colloquy ensued:

[DEFENSE COUNSEL]: Your Honor, unless he can say that [the Defendant's] the one that made those marks, that's far too prejudicial to let this jury see. He doesn't know how the marks got there, what made them, how long they had been there. That's just some marks on a gravel road and there's nobody that's laid a foundation that establishes how they got there or if [the Defendant] had anything to do with them getting there.

[THE STATE]: Well, Your Honor, Mrs. Byrd testified that the initial confrontation happened in the driveway area. This is corroborative of that to a certain extent, but [defense counsel's] objection goes to the weight of the evidence, not to the admissibility.

THE COURT: That's true. I overrule the objection.

The photographs were relevant to show the appearance and condition of the crime scene, to depict the nature and circumstances of the homicides, and to corroborate testimony that the initial confrontation occurred in the driveway. Accordingly, we conclude that the trial court did not abuse its discretion in admitting the photographs into evidence. Moreover, any error in admitting the photographs was harmless in light of the overwhelming evidence of the Defendant's guilt.

II. Sufficiency of the Evidence

The Defendant argues that the evidence is legally insufficient to support his convictions of first degree murder and aggravated assault. The Defendant challenges the sufficiency of the evidence, claiming that he acted in self-defense and that he was too intoxicated to form the requisite mental intent for the crimes.

Tennessee Rule of Appellate Procedure 13(e) prescribes that “[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.” A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

First degree murder is defined as “[a] premeditated and intentional killing of another . . .” Tenn. Code Ann. § 39-13-202(a)(1). A premeditated killing is one “done after the exercise of reflection and judgment.” Tenn. Code Ann. § 39-13-202(d). To be premeditated, the intent to kill must have been formed before the act itself, and the accused must be sufficiently free from excitement and passion. Tenn. Code Ann. § 39-13-202(d). An intentional killing requires that the person have the conscious objective or desire to cause the death of the victim. Tenn. Code Ann. § 39-11-106(a)(18); see also State v. Page, 81 S.W.3d 781, 790 app. (Tenn. Crim. App. 2002). Whether premeditation is present is a question of fact for the jury, and it may be determined from the circumstances surrounding the offense. Bland, 958 S.W.2d at 660; State v. Anderson, 835 S.W.2d 600, 605 (Tenn. Crim. App. 1992). Our supreme court has noted the following non-exclusive factors that demonstrate the existence of premeditation: the use of a deadly weapon upon an unarmed victim, the particular cruelty of the killing, declarations by the defendant of an intent to kill, evidence of procurement of a weapon, preparations before the killing for concealment of the crime, and calmness immediately after the killing. Bland, 958 S.W.2d at 660.

Aggravated assault, as charged in this case, is committed when a person intentionally or knowingly causes another to reasonably fear imminent bodily injury by the use or display of a deadly weapon. Tenn. Code Ann. § 39-13-102(a)(1)(B). A person acts knowingly when, with respect to a result of the person's conduct, “the person is aware that the conduct is reasonably certain to cause the result.” Tenn. Code Ann. § 39-11-302(b). A person's action may be knowing, irrespective of that person's desire that the conduct or result will occur. Tenn. Code Ann. § 39-13-102, Sentencing Commission Comments.

The Defendant argues that the evidence showed he shot in self-defense. Thus, he argues that the killing was legally justified. Tennessee Code Annotated section 39-11-611(a) provides as follows:

A person is justified in threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force. The person must have a reasonable belief that there is an imminent danger of death or serious bodily injury. The danger creating the belief of imminent death or serious bodily injury must be real, or honestly believed to be real at the time, and must be founded upon

reasonable grounds. There is no duty to retreat before a person threatens or uses force.

Tenn. Code Ann. § 39-11-611(a).

It is well settled that whether an individual acted in self-defense is a factual determination to be made by the jury as the trier of fact. State v. Clifton, 880 S.W.2d 737, 743 (Tenn. Crim. App. 1994); State v. Ivy, 868 S.W.2d 724, 727 (Tenn. Crim. App. 1993). As such, “in the context of judicial review of the jury verdict, in order to prevail, the defendant must show that the evidence relative to justification, such as self-defense, raises, as a matter of law, a reasonable doubt as to his conduct being criminal.” Clifton, 880 S.W.2d at 743. Moreover, the State has the burden of negating any defense if admissible evidence is introduced supporting the defense. Tenn. Code Ann. § 39-11-201(a)(3). It is clearly within the prerogative of the jury to reject a claim of self-defense. State v. Goode, 956 S.W.2d 521, 527 (Tenn. Crim. App. 1997).

The Defendant asserts that, based upon the evidence of self-defense presented at trial, he was legally justified in shooting. Examining the evidence in the light most favorable to the State, we conclude that there was sufficient evidence to support the Defendant’s convictions. The proof showed that the armed Defendant went to Robert’s home asking where Robert lived. The Defendant and Mikel got into an argument, resulting in the Defendant shooting both Mikel and Robert. According to Byrd, the Defendant shot Mikel while he was “just standing there” and he did not have a weapon of any kind. The Defendant shot Robert who was on the ground with his hands up and then proceeded to turn and shot Mikel a second time. Robert was trying to crawl away from the Defendant, who was slapping him in the face. The Defendant was laughing and drinking beer. The Defendant also pointed his weapon at Byrd. The jury heard testimony surrounding the circumstances of the shootings and from multiple eyewitnesses who saw the altercation.

The jury was not obligated to accept the Defendant’s theory of self-defense that he needed to protect himself from Robert and Mikel who were hitting him with a tomato stick. The issue of self-defense in a murder prosecution is always a question of fact to be determined by the trier of fact. The Defendant was flirting with Coy en route to the hospital, and James Wolfe testified that the Defendant understood his and other medical personnel’s instructions. In summary, there was ample evidence to support the jury’s finding in this case that the killings were premeditated and that the aggravated assault was intentional and knowing.

Finally, the Defendant asserts that testimony at trial provided sufficient evidence of voluntary intoxication. Our Code provides that, while voluntary intoxication is not a defense to prosecution for an offense, evidence of such intoxication may be admitted to negate a culpable mental state. Tenn. Code Ann. § 39-11-503(a); see also State v. Phipps, 883 S.W.2d 138, 148 (Tenn. Crim. App. 1994). Whether a defendant is too intoxicated to form the requisite mental state is a question reserved for the jury. State v. Brooks, 909 S.W.2d 854, 859 (Tenn. Crim. App. 1995).

At the motion for new trial hearing, the trial court observed that “[t]here was proof in the record that he had some alcohol in his blood, but there was also proof that he was functioning during

this episode, so again, viewing the evidence . . . in the most favorable light to the State, there was proof in the record to support the verdict.”

The jury obviously concluded that the Defendant was not so intoxicated as to be unable to form the required mental states. We conclude that the evidence was sufficient to establish the certainty of guilt of the accused beyond a reasonable doubt.

III. Consecutive Sentencing

The Defendant contends that the trial court erred in ordering consecutive sentencing. Regarding the manner of service, the trial court ordered the Defendant’s two life imprisonment sentences for first degree murder and four-year-sentence for aggravated assault to be served consecutively to one another.

A transcript of the sentencing hearing is not contained in the record on appeal. Because the Defendant failed to prepare an adequate record on appeal pertaining to sentencing, we are precluded from determining this issue on its merits.²

When a party seeks appellate review, the party is charged with the “duty to prepare a record which conveys a fair, accurate and complete account of what transpired with respect to the issues forming the basis of the appeal.” State v. Ballard, 855 S.W.2d 557, 560 (Tenn. 1993) (citing State v. Bunch, 646 S.W.2d 158, 160 (Tenn. 1983)); see also Tenn. R. App. P. 24(b). It is well established that “an appellate court is precluded from considering an issue when the record does not contain a

² Within in the record are “Sentencing Findings of Fact” signed by the trial judge and explaining the reasons for the length of the aggravated assault sentence and manner of service. The trial court determined that the Defendant was a dangerous offender and ordered consecutive sentences. The trial court, applying the factors enumerated in State v. Wilkerson, 905 S.W.2d 933, 938 (Tenn. 1995), provided the following rationale for consecutive sentencing:

With regard to the first [Wilkerson] factor [the terms imposed are reasonably related to the severity of the offenses committed], this court finds the convictions for the first degree murders of Robert C. Hawkins and Mikel Hawkins are of the most severe variety. Both victims were accosted and murdered in, or at the edge, of Robert C. Hawkins’ yard. After Robert C. Hawkins and Mikel Hawkins were shot, the [D]efendant then assaulted Ms. Byrd by pointing a pistol at her. The [D]efendant argues concurrent sentences for the first degree murder convictions are not appropriate [sic] since the [D]efendant would not be eligible for release from concurrent sentences until he is passed 100 years of age. However, this court finds that the aggregate length of the sentences is reasonably related to the severity of two first degree murders and an aggravated assault.

This court finds under the second factor [the terms imposed are necessary in order to protect the public from further criminal acts by the Defendant] that the [D]efendant is a danger to the community. The pre-sentence report establishes a history of alcohol and drug abuse and unsuccessful attempts to re-habilitate. As further evidence the [D]efendant is a danger to the community, he assaulted Mr. Rose in June of 2004, only a few months before the event which resulted in these convictions. The [D]efendant is obviously unable to control his behavior and will continue to be a danger to the public unless incarcerated.

Because the trial court appropriately considered the applicable sentencing principles and made the necessary findings under Wilkerson, the trial court’s sentencing decision is presumed correct.

transcript or statement of what transpired in the trial court with respect to the issue.” State v. Draper, 800 S.W.2d 489, 493 (Tenn. Crim. App. 1990); see also Ballard, 855 S.W.2d at 560-61. Moreover, in the absence of a record to review “the appellate court must conclusively presume that the ruling of the trial judge was correct, the evidence was sufficient to support the defendant’s conviction, or the defendant received a fair and impartial trial.” Draper, 800 S.W.2d at 493; see also State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991). Accordingly, the Defendant’s failure to include a complete transcript of the sentencing proceedings forming the basis of this appeal results in waiver of any challenge of the trial court’s ruling. See Ballard, S.W.2d at 560-61; Draper, 800 S.W.2d at 493.

CONCLUSION

Based on the foregoing reasoning and authorities, we conclude that admission of the challenged photographs was not error, that the evidence was sufficient to support the Defendant’s convictions beyond a reasonable doubt, and that the Defendant has waived review of any sentencing issues. The judgments of the Rhea County Circuit Court are affirmed.

DAVID H. WELLES, JUDGE